

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION

JAMES ALLAN HENNIS and  
SANDRA KAREN HARRIS

PLAINTIFFS

v.

Civil Action No. 2:10cv20-KS-MTP

TRUSTMARK BANK, et al.

DEFENDANTS

**ORDER**

THIS MATTER is before the court on a Motion [91] to Strike Plaintiffs' Affidavit of Conditional Acceptance and Request for Proof [86] filed by Defendant Advanced Call Center Technologies, LLC ("Advanced") and joined by Defendants BMW Bank of North America ("BMW Bank"), BMW Financial Services of NA, LLC ("BMW Financial Services"), Financial Services Remarketing, Inc. ("Financial Services"), BMW Card Services [92], Discover Bank, Discover Card Services [93], US Bank, Manifest Funding Services [94], HSBC Bank [95], Advanta Bank Corp. [96], Regions Bank [99], and a Motion [98] to Strike Plaintiffs' Affidavit of Conditional Acceptance and Request for Proof [84], filed by Defendant Trustmark National Bank ("Trustmark"). Plaintiffs have not responded to the motions. Having reviewed the motions and the docket in this matter, the court finds that the motions should be granted and that Plaintiffs' Affidavits of Conditional Acceptance and Requests for Proof [84] [85] [86] [87] [88] [89] [90]<sup>1</sup> should be deemed stricken.

On or about February 23, 2010, Plaintiffs served discovery requests on various defendants,

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<sup>1</sup> [84] is directed to Trustmark; [85] is directed to Regions Bank; [86] is directed to Advanced; [87] is directed to Discover Bank and DFS Services, LLC, Financial Services, BMW Bank, BMW Card Services and BMW Financial Services; [88] is directed to HSBC Bank; [89] is directed to US Bank and Bancorp Manifest Funding Services; and [90] is directed to HSBC Bank.

and by Order [73] dated March 15, 2010, the court ordered that the discovery requests were to be deemed stricken because the parties had not yet had a case management conference<sup>2</sup> and because there were no rules, stipulation or court order authorizing discovery at that time. *See* Fed. R. Civ. P. 26(d)(1) (“A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except...when authorized by these rules, by stipulation, or by court order.”). Despite this Order, on March 23, 2010, Plaintiffs served several “Affidavits of Conditional Acceptance and Requests for Proof” in which they request that Defendants answer various questions and provide documentation to support their responses. *See* [84] [85] [86] [87] [88] [89] [90]. Many of these requests are identical to those set forth in the previous, stricken discovery requests, and are clearly another inappropriate attempt by Plaintiffs to obtain unauthorized discovery. Accordingly, and in light of the fact that Plaintiffs have not responded to the instant motions,<sup>3</sup> the court finds that the motions should be granted.

IT IS, THEREFORE, ORDERED and ADJUDGED that Motion [91] to Strike Plaintiffs’ Affidavit of Conditional Acceptance and Request for Proof [86] filed by Advanced and joined by BMW Bank, BMW Financial Services, Financial Services, BMW Card Services, Discover Bank, Discover Card Services, US Bank, Manifest Funding Services, HSBC Bank, Advanta Bank Corp., Regions Bank, and Motion [98] to Strike Plaintiffs’ Affidavit and of Conditional Acceptance and Request for Proof [84] filed by Defendant Trustmark are granted. Plaintiff’s Affidavits of Conditional Acceptance and Requests for Proof [84] [85] [86] [87] [88] [89] [90] are deemed stricken. The court will set appropriate discovery deadlines and parameters at the case

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<sup>2</sup> A telephonic case management conference is scheduled for April 14, 2010.

<sup>3</sup> *See* L.U. Civ.R 7(b)(3)(E) (“If a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.”).

management conference, as provided by the applicable rules.

SO ORDERED this the 12th day of April, 2010.

s/ Michael T. Parker

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United States Magistrate Judge